

BOARD OF ZONING APPEALS

Minutes May 23, 2000

The meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on May 23, 2000, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: FLOYD PITTS, BICKLEY FOSTER, JOHN ROGERS, JAMES B. SKELTON, BRADELY TIDEMANN, and JAMES P. RUANE. The following Board member was absent RANDY PHILLIPS.

The following Planning Department staff members were present: Secretary, DALE MILLER, and Assistant Secretary, LISA VAN DE WATER. ROSE SIMMERING Recording Secretary, absent.

Also present KELLY RUNDELL filled in briefly for SHARON DICKGRAFE, Law Department who was late and came in at 1:45 p.m. Absent J.R. COX, Office of Central Inspection,

PITTS: Calls meeting to order. Asks for roll call.

SIMMERING: Complete the task and calls roll.

PITTS: The first Item on the Agenda is the approval of meeting minutes for March 28, 2000. These were deferred one time I believe. Has everyone had an opportunity to go over those?

FOSTER: I went over them with Randy and with Lisa and there were two or three things that I noticed at that time.

PITTS: If you had those corrections made that you were interested in, the Chair will entertain a motion for approval of those minutes.

FOSTER moves TIDEMANN seconds that the minutes for March 28, 2000 be approved.

MOTION carries 6-0.

PITTS: Now April the 25th I guess we could have done both of those at the same time but we didn't. April the 25th, meeting minutes.

RUANE moves TIDEMANN seconds that the minutes for April 25, 2000 be approved.

MOTION carries 6-0.

PITTS: Case Number BZA 2000-00008, Reliance Insurance Company; Samuel's Diamonds.

VAN DE WATER, PLANNING STAFF: As you said BZA 2000-00008 is a variance request brought to you by Samuel's Diamonds, and Reliance Insurance Company as property owners to allow a building sign with out the 150 feet of parking or paved area between buildings within this C.U.P. Now this variance is for an existing building sign, it is on the south elevation of the Samuel's Diamonds retail store. As you will see in the slides this south elevation is only a 110 feet from the T J MAX Store which is farther to the south. Both of these signs were installed without a sign permit back in December, I believe, or perhaps before, but, there have been attempts by the property owner to come into compliance. They have a new sign company that is getting the proper permits to have these signs in place. But when the west elevation sign was legally permitted in January, but the needed for a variance for this south elevation sign. The applicant was made aware of it at that time. Both of the signs are identical and I will show pictures of them. Both of them have 3 feet high letters they are 30 feet long making them 90 square feet in area. They are at a maximum of 18 feet above grade. Per the sign code in the "LC" Limited Commercial zoning district, three building signs per business per elevation are permitted for elevations with street frontage, or with an elevation that has 150 feet of paved parking or drive way in front of them. For those signs, a total square footage must be no greater than 20 percent of the given elevation and no individual sign can be greater than 400 square feet. The sign in question of this variance meets the sign requirements but of course does not have that requisite 150 feet of paved parking.

Let's go through the slides real quick, here we are at Rock and Kellogg, the area in questions is outlined in black there. This is an aerial view, I will have to go up to the screen to point this out because I do not have a pointer. This is the out building and Samuel's Jeweler's is actually occupying this corner. This is the T J MAX store along with other retail stores here.

On this corner is another retail store by the name of Mr. Goodcents, they also have a sign on that south elevation which is actually, estimating from the pictures, larger than the sign in question here. This was part of the application for the west elevation sign just to show you the sign that we are talking about is actually says "Samuel's Diamonds" and this again is the building in question. This is the southwest corner, this is the sign that is part of this variance and 110 feet back to the T J MAX building. I apologize, the pictures are a bit dark, this is looking east towards the Samuel's Diamonds building you will see shortly exactly what the sign looks like but this is the corner and if it was any lighter you would see Samuel's Diamonds on the top of that building. This is looking towards the northeast and you can see both signs, this is the one that has been legally permitted, this is the one that is part of the request today. This is looking due south toward the T J MAX store, again another dark photograph looking towards the east to the rest of the shopping center here and looking off towards the northwest. That is the sign in question and then off to your right there is the Mr. Goodcents retail store. This is looking west again, Samuel's Diamonds on the right, T J MAX on the left, this is the parking, and driveway area that is between the two elevations. Back to the aerial.

I have noted the five criteria in your secretary's report. Staff is recommending approval of this subject to some pretty standard conditions, that they obviously get the necessary permits, that this variance is for the south elevation and that it should be limited to a non-flashing internally illuminated sign, which it is currently. I will answer any questions that you have.

PITTS: Thank you Lisa. Any questions for staff?

RUANE: Who is the old sign Company?

VAN DE WATER: The first sign company?

MILLER: Miracle.

VAN DE WATER: Miracle. Randy Sparkman will be here, and he is running a little bit late, I believe he is in a meeting at the City Managers office or downstairs, but, he is suppose to be here in about five minutes. But, he can speak to some of the specifics of why the sign was put up and how this all came about.

RUANE: Thank you.

PITTS: How did it come to your attention that the sign was up?

VAN DE WATER: The applicant came in to get a permit for the south elevation sign and it was made aware to him that he needed a variance and then they in turn contacted us.

PITTS: Any other questions for staff?

FOSTER: Lisa, on the conditions, would you normally or would it be desirable to put in something about distances in there? They usually say according to the conditions, should it mention the distance between them? What might be changed or something? As a minimum or another words don't we usually do that? Don't we usually say not to exceed?

VAN DE WATER: By reducing that 150-foot? We could certainly add that.

FOSTER: I just think it would give them something to hang their hat on because really when you prove the uniqueness and all the others it really doesn't, those are the findings, this is the conditions that they not reduce it...

VAN DE WATER: I guess given that the building is already there, and the sign is already up, I didn't see the need to put that in but I can certainly add it if you feel that it is necessary.

FOSTER: I think we have to look at it as if it doesn't exist.

VAN DE WATER: Yes.

FOSTER: We have to decide would we have done that whether it has happened or not.

PITTS: Any other questions of staff from the bench? Thank you.

MILLER: The applicant is here.

VAN DE WATER: Randy Sparkman from OCI will be up.

PITTS: Is anyone in the audience to speak in favor of the variance, they may approach the microphone please.

EVERETT FETTIS, Attorney and representing the Dunn Sign Company: On this application we have consulted with the people in Central Inspection and the Planning Department and can say that they have been very cooperative talking to us and discussing this whole thing. The signs are both identical, the one that is on the westside of the building was shown to approve the requirements when Dunn signs started representing them. I should say this that the people in the business who hired Dunn to come in on this had hired us to go ahead and look into the thing and they then went in and applied for a permit which was apparently not done by the previous sign company. They found what was needed and we consulted both the sign company and our office consulted with the staff to see what was required.

I noted that there was a building next door to this company immediately would be also in conflict with strict compliance because they had a sign in front of their building which was across also from the south too close. But, that when I asked about that and they said that was of course grandfathered in, apparently after the ordinance was changed so, we did investigate that. We found the people in Central Inspection and in the Planning Department very cooperative and they felt that we had done everything that we could do under the circumstances. They had already approved the sign on the west and so we are asking now the variance to approve the sign on the south.

I would say in one thing in addition as I read the ordinance, I think the reason for the requirement of the distance is the distance beyond the property line of the location. The purpose I think of the requirement of the 150 feet is to make sure the sign, which is a lighted sign does not reflect against the persons who are beyond the distance to the property beyond the total property. If you are familiar with this particular location it is a large location and the distance of course is much more than that to the property line or to reflect on the people off of the property itself. I think we are not doing any disservice at all to the neighbors by our location of the 150 feet, I think that it does not harm at all for the location. I think there would be no harm to the granting the variance because it is not going to be infringing on the location of the people beyond the property line itself. I think the entire property line has to be taken into account. I think that is what the requirement is all about. I would be glad to answer any questions you might have.

PITTS: Thank you very much, are there any questions from the bench for Mr. Fetti? Is there anyone else to speak in favor of the variance? Is there anyone in the audience to speak in opposition of the variance? Seeing none we will bring the discussion to the bench. This looks like a fairly straightforward request, that they have made every effort to amend something that was perhaps either done wrong or grandfathered. Do you have any comments Mr. Foster?

FOSTER: I still note that this is in a Community Unit Plan and I will probably have a question for Randy about that. I notice that there is a reference to that. I am not sure what that changes, I think there is a reason stated here. I do not see any reason why it should not be approved. What would be the final distance between it, Lisa?

VANDEWATER: It is at 110 feet.

FOSTER: Ok, I think we ought to put it in the conditions Mr. Chairman that we do have some idea how much it went from 150 to 110.

PITTS: You mean on the distance that you had mentioned previously to Lisa?

FOSTER: Right.

RUANE: Bickley, how would you word that into a motion?

FOSTER: Have you re-worded it Lisa?

VANDEWATER: Yes, if you look at the recommendation on page three where it says the variance to allow a 90 square foot building sign on the south elevation at a minimum of 110 feet from the building to the south be approved. That is what I added there.

PITTS: So is that going to be item number four of your recommendation?

VANDEWATER: Actually, it is part of the recommendation prior to the conditions it is just the variance itself.

FOSTER: I don't see anything different, Mr. Chairman, in the write up of the staff then unless, somebody else would like to do it.

FOSTER moves SKELTON seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions as amended set out in the amended Secretary's Report.

MOTION CARRIES 6-0.

BZA RESOLUTION NO. 2000-00008

WHEREAS, Reliance Insurance Company (property owner); Samuel's Diamonds, c/o Suria Young (tenant), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a to allow a building sign without 150 feet of parking lot between buildings on property zoned "LC" Limited Commercial and legally described as follows:

Lot 4, Block 1, Sharon Ryan Addition to Wichita, Sedgwick County, Kansas. Generally located on the south side of Kellogg and east of Rock Road.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of May 23, 2000, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590(B), Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique, inasmuch as the building is an out building in a much larger shopping center. Traffic and parking occur both on the south and west sides of the out building, thus the need for building identification on two sides. The original shopping center was designed without regard for the requisite 150 feet of paved area between buildings to allow proper building identification.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as only those persons or businesses within the shopping center will be able to see the sign. It is completely buffered from the residences behind the shopping center, to the south, and not visible from Kellogg.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of staff that the strict application of the provisions of the Sign Code constitutes an unnecessary hardship upon the applicant, inasmuch as the original shopping center was designed without regard to the Sign Code requirement of 150 feet of paved area for building signs. There is significant traffic within the shopping center along the south side of this building, thus the need for building identification, especially for those persons driving from east to west within the shopping center.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the approved sign will help to make this business visually accessible and identifiable.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Community Unit Plan and the Sign Code, inasmuch as the intent of this provision of the Sign Code was to prevent illuminated signs from shining onto residential areas. This sign is completely buffered from any residential area by larger buildings within the shopping center.

WHEREAS, each of the five conditions required by Section 2.12.590(b), Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to allow a building sign without 150 feet of parking lot between buildings on property zoned "LC" Limited Commercial and legally described as follows:

Lot 4, Block 1, Sharon Ryan Addition to Wichita, Sedgwick County, Kansas. Generally located on the south side of Kellogg and east of Rock Road.

RECOMMENDATION: Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variance to allow a 90 square foot building sign on the south elevation at a minimum of 110 feet from the building to the south be **APPROVED**, subject to the following conditions:

1. The applicant shall obtain all necessary permits for the installation of the approved sign.
2. The sign approved by this variance shall be placed on the south building elevation.
3. The sign approved by this variance shall be limited to a non-flashing internally-illuminated sign.

PITTS: Just as a clarification, I guess this is a little bit late, are we making that 110 feet minimum distance item 2 and then your sign approved by this variance would be item 3?

VANDEWATER: No, it is actually not any part of the 1, 2, or 3 conditions, it is actually part of the variance in the recommendation first paragraph.

PITTS: Alright then.

VANDEWATER: Shall I read the whole recommendation to you so that you can get that wording?

PITTS: No, I am alright I was just wanted to know about where it was going to go. Is there any other business? It looks like the only other business we have got is the review of the City of Wichita Sign Code presentation.

SPARKMAN: Would you like for me to stand up and do that?

PITTS: Whatever you are comfortable with.

RANDY SPARKMAN, ZONING /LICENSING AND SIGN SUPERVISOR FOR THE CITY OF WICHITA: I will stand up. Part of the duties that I have, are to enforce the sign code as written. You are going to have to give me a little bit of a direction, if you wish, because I could stand up here for probably a couple of hours and talk about sign code and still I don't think it would make an absolute amount of sense to anybody.

But, generally speaking, the sign code that we are enforcing here is one that was amended approximately 1990 and there was changes that were made to it at that time that have basically brought it to the form that it is in. It enforces the permanent signage for walls, and poles throughout the city. It enforces the Community Unit Plans, P.U.D.'s, Old Town district, all the various different locations, types of signage, walls signs again, off-site signs, which are your billboards and things of that nature. Banners, temporary signs, portable signs, balloons, just about everything you can think of, is what we enforce on this sign code.

The problems primarily and I think the reasons that you would see variances, or request to the sign code here at the BZA are primarily things that you just now addressed. For example in the limited commercial zonings where the requirement is to have at least 150 feet of surface parking area or street frontage to allow a sign to go up on a wall in most cases. If you do not have that street frontage, or you do not have 150 feet of surface parking then the code further requires that we limit the signs to 15 square feet. And then you have to have an entrance way and some other things also that makes it very difficult for us to address a lot of signage that is typical today in the Limited Commercial zonings.

I think sometime in the very near future, I would like to get together with the Director of Planning, and staff and address some of those issues. To see if we can't look at that in some way rather than just sending everybody to you in a variance procedure but right now, that is what we have to do. In the General Commercial zonings, Industrial Zoning Districts, Central Business District, we do not have the same difficulties and problems. Because that requirement for the surface parking is not there so you do not see normally requirement and you are not going to see the variances in BZA brought to you.

We have in the last few years, and we have gone out and we have canvassed the City to know, where, most all of the off-site or billboard signs are located. So those are not typically a difficult issue and things that you would see. We have tried to get rather creative here of late and made sure that what we are doing is in the context of the sign code but not overly restrictive to the community as a whole. Somewhat from the direction of my boss, Kurt Schroeder and other indications, we have tried to be real open minded. But, yet not so much so that we have violated any portions of the code.

Also, what we do is deal a lot with the banners and we have been emphasizing an awful lot here recently on banners because they seem to have gotten out of control. Most banners are restricted to either use for national holidays, grand openings, going out of business or parade of homes those types of situations and we have been trying to get that back into control. I am not going to sit here and tell you that we have done a magnificent job at it. Somewhat because we have to put our prioritize some place and just keeping up with the massive number of wall signs, face changes and pole signs, monument signs, things of that nature has been pretty much a daunting task.

At the present time I only have two fulltime sign staff persons. One is for the east side of town with Broadway being the dividing line, and one is for the west side of town. Although, I have assigned J.R. Cox and he sits here most of the times you have meetings, he works primarily the Old Town District and the Historic East Douglas District as much as a part-time basis as much as anything.

That is a very quick and if you will a "dirty" overview of what we do with the sign code. Other than that, I would have to get into a lot of details and I am not exactly sure, what you would like to see me do or say to you up here. If you have specific questions or areas of interest I think probably this would be a real good time to go off into those.

RUANE: Do you get the cooperation you need from the sign companies that do most of the business in town?

SPARKMAN: Generally speaking, we have what I would term an excellent relationship with sign companies. As with anything else, we have some difficulties in certain cases. But again, generally speaking I think we have a real good relationship and most of them know what they can do and can't do. Most of them get permits, as necessary and if they have for some reason failed to get a permit, most of them will come to us after the fact and say we slapped a sign up over the weekend and just didn't realize that we didn't have a permit. Then, of course we will iron out that problem one way or the other.

Several years ago, quite a while ago actually, we were issuing quite a few citations, we were issuing an awful lot of double fees for signs getting installed prior to permits being issued. But to help with that situation, we created a faxing program. Now they can fax their permits into us and we have a kind of an escrow account set up for them, and we can get those permits back to them through the fax program also, and they can have them in a turn around of usually less than 24 hours. Before that we were looking at a five-day turn around. By the time they

sent it to us in the mail, we received it, processed it and got it back to them in the mail, and there was a lot of room in there for mistake and problems. So the fax program has really helped out an awful lot.

FOSTER: Randy, were you around in 1990? Part of the review at that time?

SPARKMAN: No, Sir I was not. I was around but, I was not in the sign section at that time.

FOSTER: The reason I am asking you this is Keith Alter used to be on this Board for many years, and Chairman several times. I learned from him. I guess he was on the committee at the time and indicated that some of the reasons for the 1990 update. Maybe you have heard them or can you look back and tell me? That basically, I got the feeling from what he said that the signs were thought out as being too high at that time, overly intrusive, and that really this was sort of a downsizing you might say. Would that be correct?

SPARKMAN: That would be very correct, Sir. Yes, I can tell you for a fact that the signs that were allowed, speaking more towards pole signs, at that time they were allowed to be almost twice as large as what they are allowed to be now and they were allowed as a right to be approximately 10 feet taller than what they are right now. So, it was a downsizing of the square footage and it was a reduction in height. But, then there was also a reduction in the number of portable signs that were allowed and a change, I believe there was a change to the spacing requirements for them also. That all happened approximately 1990. If I understand correctly, it was a very difficult change to the code. A lot of discussion, I think it would be unfair to not note that there was quite of bit of opposition to it at that time also.

FOSTER: Do you feel that it has been generally accepted now? Or is it a continuing fight or problem?

SPARKMAN: I think it has been generally accepted quite well now. There are always a few companies that have a little more ability to afford more signage than others and that would like to have more signage and especially larger taller signs. But, I think if you look out and I think it is fair to say that if you look out on the horizon and drive around on the streets, I think you see signs at a much lower height than what they were before. I think it is pretty aesthetically pleasing and reasonable in height. You can make the argument that along the highway there is probably a need for some or at least and certainly some desire for some higher signage. But when those occasions arise, you find them right here in front of you to make that decision.

FOSTER: I certainly feel that there was, at that time, some justification to cut back. You consider how much traffic increase we have had in the City. In the last few years with the activity how much more difficult it is to drive down say West Street with all the distraction and so forth. I think it's a legitimate point. Now, we talk about signs being grandfathered in. Is there any proceedings then for billboards, or anything else in the regulations?

SPARKMAN: No.

FOSTER: So none of them would automatically be taken down after five years, or ten years?

SPARKMAN: No, Sir. There is no automatic removal of any of those kinds of signs that I know of. We have had a lot of them removed but not from the sign code.

FOSTER: Which I think states, I think you could do that, I mean you know I think cities could do that if they wanted to. Now, is there any reason and this is a generic question that any of the variances that this Board has had, do you look at those periodically, in other words instead of continuing to have variances on some does it give a clue that there should be a change? I mean would a five-foot change on something satisfy a third of our request or something? In other words, are we learning here as we go along? If a variance is given too much on something it almost is not unique anymore. Are we running into any of them like that? Do you all would review and say "Hey we better change the regulation?"

SPARKMAN: Generally speaking, I don't think that the variances that you are seeing here normally at least the larger percentage of them hint to any kind of a requirement or a change that should be mandatory to the code. Most of the variances, I think it would be fair to say and Dale, you might need to correct me on this, but most of the variances that you see are for height increases. I really, honestly think that probably the larger majority of them along the highway and some of those areas. Which, I don't think you could single out the highway as a need for the change of the code. Because not everybody along the highway needs signs and not everybody along the highway does want them.

The major change to the code that myself, my staff, and I think my boss, Mr. Schroeder, would really like to see, would be in this Limited Commercial Zoning to change this requirement for 150 feet of surface parking, or street frontage. In today's development, where you have a lot of pad sites that have gone in between streets and the strip malls, that cuts a lot of those businesses out of the ability to have signs just automatically by the Sign Code. I think that it would be reasonable to assume that really was not probably the intent of the code to restrict those people from having signs just because they are adjacent to another commercial business. So that would be the one area in particular that we would like to see the change through the code.

But, then also if we are going to change the code in those ways, I think it is also time that the Superintendent has the ability to do some of this. Not really varying, that is required here at this stage, but have a little bit more ability to make some decisions on some things. The Superintendent together with the Planning Director, has the opportunity to make some decisions with the Zoning Code that we probably ought to extend that to the Sign Code also.

FOSTER: You have gotten to another one of my questions. To what extend can the staff adjust things? How much le-way is there?

SPARKMAN: With the sign code, very, very, little. The only thing that we can do is interpret as to what it says or means, the intent and purpose and if we feel that is a defensible decision that would hold up by law, and in your eyes also, then we can make that interpretation. But, we can't make a variance at our level at all that I know of.

FOSTER: It is more of an interpretation than and adjustment?

SPARKMAN: Right.

FOSTER: It would be an interpretation of a C.U.P. or something like that?

SPARKMAN: Right, and that again is an adjustment that I am basically talking about that we would like to see the Superintendent capable of making certain adjustment possibly with the agreement of the Planning Director, something along that line.

FOSTER: I have a bit of a problem, Randy, with a C.U.P. as the staff knows. And I personally believe that a sign condition in a C.U.P. should go back through the Planning Commission as horrible timing as it is to do that but, I am under the impression that it is not, an item that should come to us. I have abstained from voting on one because I thought that way and I think there is a divided opinion among people on that. The reason for example I voted on the one today, and it made reference in the C.U.P. to the sign. In other words in the C.U.P. it says that the sign should be in accordance with and it is referring to the Sign Code. The sign code is where it gives the authority to this Board then to make those variances and so forth.

So, maybe that works okay to that extent. But, where it does not make that kind of reference, where it actually says that a sign can't be over 35 feet high, I have problems with it. As to whether it comes under the C.U.P. and is decided by that. And whether there was any other discussion going on or whether you have any comments on that, but to me, a C.U.P. is a giant variance when you think of it and that is why I mention that.

SPARKMAN: There is a lot of discussion about that topic and we have had more than a dozen of those discussions. In our opinion, it depends on what the C.U.P. says to a large degree. Also and we have got C.U.P.'s that were written many years ago, and we have new C.U.P.'s that have been clarified very much so, in the last few years. On a lot of the older C.U.P.'s if it says as per Sign Code that makes a major difference as to how we interpret it. If the C.U.P. that we are dealing with spells out specifics of what the signs are allowed to do then that in our opinion goes back to the Planning Commission. So, we have to look at all of these factors and try to figure out which way we have to go and often times we have to consult with either the Planning Department or the Law Department to figure out some of these things. And even with that we often, well I am not going to say that we often do but there are mistakes sometimes may be made.

FOSTER: Have you come up with some standardize way that you are doing signs now on C.U.P.'S to take care of that? I mean do you want them to come as variances or do you want them to be held within the C.U.P.?

SPARKMAN: Well, again, we have to see what the language of the C.U.P. is.

FOSTER: I am talking about a new one that comes in.

SPARKMAN: New ones we are trying to urge any developers that we talk to, to deal with the sign questions to the degree possible now, at the time of development. But, knowing that any development out there whether it is a C.U.P. or otherwise is going to go through a growth period that we are going to have to be responsive to. So we can't lock them in and we know that there are going to be request for amendments or adjustments, but we can ask them up front. Most of the good developers will do that. They will have an awful lot of restrictions and regulations on their own before it ever gets to us. They will take care of a lot of those problems ahead of time.

MILLER: Planning staff is moving towards trying to get all the cases in C.U.P.'S handled at the Planning Commission. In fact we would have done the one that you heard today, probably that way except for the fact that the applicant had already obtained an ownership list consistent with BZA requirements, as opposed to what would have been required to do a C.U.P. Since they already spent the money and ready to go BZA we went that way today.

FOSTER: Given that, for some of our newer members, we had cases that averaged I think, Rose and I, were looking at them and about an average of one per month if you average all of them where we had two and all that last year. You eliminate some of the C.U.P. ones your work is going to be less and it is going to be much harder to have these go through the C.U.P. process. But, be that as it may, are there or is there anything that this Board might do to or any recommendations or anything that would help you in reviewing the, a member used to be on the committee when they reviewed this is why I am bringing this up. Is it time to look at it? Is there anything in it that has like a five year review or an annual review or anything built into it?

SPARKMAN: No, Sir. There is nothing of that nature that makes it automatic. As we identify needs, we just have to bring those things forward and attempt to look at code changes. Which, there have been some between that 1990 year date. When the new zoning code was adopted and we created some new zonings then we had to cover those in the sign code and there were some improvements at least in our opinion were made at that time for those new zonings. A lot in the last six to eight, ten years, it has been my directions and emphasis that we work as closely with the Metropolitan Planning Department staff on any problems or any complications that we observe. I don't think that, that actually, well I can guarantee you that did not exist prior to that time date. So a lot of the problems that we may have experienced years ago, just are not there because we are working a lot closer with their staff. That has been a real help, right there in itself.

RUANE: Has there been a task force or committee of industry, and neighborhood folks that were working on potential revision to the sign code in the last couple of years? Whatever came of that?

SPARKMAN: Yes. About three years ago, we held extensive meetings with a task force that included industry personal, people from the Wichita Area Board of Contractors Board, and some neighborhood folks, and my staff. We wrote up some pretty decisive changes to the code that we felt would have been great improvements, certainly you would not have seen this request for BZA today if it would have been adopted. It was completed and did not go much further from there. I can not give you the exact reasons why, but it just wasn't a desirable time to discuss those changes is all I can say.

RUANE: So, it didn't even make it to the Agenda?

SPARKMAN: It is my understanding that it did not go forward.

RUANE: That might be kind of a legislative way to address the problem that you are talking about Bickley, I think.

FOSTER: I think something has been on since 1990 and the sign industry and the technology today and all that. That maybe it needs to be looked at.

MILLER: The big problem though, that you need to keep in mind is, when you open it up to fix something you are opening it up for both sides. I think that is what Randy's committee ran into. Is that the things that staff thought, Boards and Commissions, things that appeared needed to be fixed were being addressed but the signs companies also thought that it was the time to open things up. I think if you look at it as a cost-benefit, and I think the decision was that what was going to end up was worse than what we had so it was better to stop. So you kind of have to gauge your political climate on when you are doing these things.

RUANE: I understand.

FOSTER: I have always looked, and tell me if I am wrong Randy, don't hesitate to do that. But, I have always looked a little bit more favorable upon the signs that have problems along say along Kellogg or along the Interstate where there are varying elevations and interchanges and things like that. Because, I would assume the sign ordinance does not really address that. I have always assumed that, is that correct?

SPARKMAN: First of all, I would never tell anybody they are wrong, I might tell them we don't have the same understanding of things.

FOSTER: It won't hurt my feelings.

TAPE CHANGE

SPARKMAN: It has changed somewhat also since this sign code was first written. This document is still the basic document that was probably twenty or thirty years old. It is basically the same document. There have been improvements to it, changes to it, that sort of thing. But the base document is quite old, so it proceeded any development thoughts or understanding at that time that we have along with Kellogg and many places throughout the City.

FOSTER: Are we holding back anything based on electronics or technology or something that the sign industry would like to do and can't do because of these regulations?

SPARKMAN: That is a good question, I don't believe that we have really held them back dramatically. When new innovations have become available we have dealt with that as needed. The only thing that I have heard that I know that we just haven't even begun to address is any kind of a hologram, what am I trying to say, I can't think of the word right now. But, it is a hologram, I have heard some questions about holograms and are they allowed or not and the answer is they are just not addressed. But that really hasn't become an issue either in this area yet.

FOSTER: Have you had a chance to approve or disapprove one?

SPARKMAN: Haven't had anyone bring one to us that they truly wanted us to address.

FOSTER: Since 1990 have any court cases that you are aware of that in regard to the sign ordinance that we should be aware of?

DICKGRAFE: Piccadilly.

SPARKMAN: Yes. We just recently completed a sign case about Piccadilly Sandwich Square whatever the name of it is on West 21st Street. It was our belief that the code did not allow them to put a "roof sign" up on top of their building and I think that the code still disallows the use of roof signs. The interpretation or the questions boiled down to whether or not it was truly a roof sign, I am not sure that was ever fully one hundred percent determined but, none the less the case was thrown out of court and the sign was allowed. We have steadfastly for the last year or so, refused companies to put up what we consider to be roof signs. Any signs that are above the plane of the roof starting at the gutter at the lowest end to the peak at the top end. That is a bit of a change from previous years where they were allowed to go on top of a roof if they did not exceed the height of the peak of the roof. It was a question that was asked and the answer was to not allow roof signs as of approximately a year, a year and half ago.

FOSTER: Wasn't the issue Dale, on 21st Street and Oliver that was a roof sign so that is why that came here?

VANDEWATER: Yes.

SPARKMAN: Yes, you did see a BZA on that not too long ago, that is correct.

FOSTER: Now, the Piccadilly variance did not come here did it?

SPARKMAN: No it did not come here it just got put up there without a permit being issued which was another issue and ended up in court.

RUANE: It went directly to court?

SPARKMAN: I am sorry.

RUANE: It went directly to court?

SPARKMAN: Well after going through all of the attempts to rectify it otherwise we ended up taking the company to court for having what we felt like was an improper sign, against the code.

DICKGRAFE: That was a criminal UCC that was brought. So, they hadn't complied, they were given notice to essentially remove the sign. They were given the option to bring it to this Board to get a variance. Their attorney didn't think that the way the sign was mounted on the building that it constituted a roof sign. If you look at the code in the definitions, where it talks about roof signs frankly it is not real clear.

It is my opinion that the District court agreed that how the sign was anchored to the building did not constitute a roof sign and therefore no variance was required and the sign has been allowed to stay. Randy and I don't think either one agreed with that interpretation. However the problem is, in a criminal scenario the only thing that I can appeal, as a prosecutor, is a question of law, which is one of statewide interest. Most likely, from my experience, Supreme Court isn't going to care whether Piccadilly gets to keep a roof sign. So we lived with that ruling and certainly, when and if the sign code is looked at again, I am sure that is something that we will look at changing or clarifying the definitions.

FOSTER: Sharon, or Randy, we look at this as a separate document, is this adopted as part of the zoning regulations, or is it a separate code that we are enforcing?

SPARKMAN: It is a separate code.

MILLER: In 1990 we pulled it out of the Zoning Code.

DICKGRAFE: It is a separate section in the code in chapter 24 of the City code. I am sorry, the Sign Code gives the authority to grant a variance from the sign code to this Board.

FOSTER: But, we shouldn't be referring to it then as part of the zoning regulations?

DICKGRAFE: No. I don't think the documents prepared by staff do that.

SPARKMAN: There are a few discreet references to sign allowances in the Zoning Code, just very few, only two or three that I know of but, I don't think that is an issue that you are talking about.

FOSTER: A final note Mr. Chairman, I might share with Randy, the only complaint that I have ever heard after 1990 about the sign code was that it lowered the sign. It was one of the larger companies in town that had invested in cherry pickers, and high tech equipment to take care of high signs, they complained that somebody from Oklahoma with a ladder in a pickup could now come up and take care of the signs in Wichita. That is the only complaint that I ever heard about it. They have gotten lower. I thought that was a compliment actually.

SPARKMAN: If it is the sign company that I am thinking of they make a very large amount of money changing out light bulbs in a lot of the strip centers around town so those cherry pickers aren't going to waste, they are making a lot of money.

PITTS: Any other questions from bench for Mr. Sparkman? Randy, I appreciate you taking your time out to come down and addressing some of these issues with us.

SPARKMAN: Thank you.

PITTS: Dale, do we have anything else?

VANDEWATER: I just wanted to say that what you guys received in your packets is a copy of the sign code for your reference, and this four page matrix is something I put together and it helps us out in Planning. It is very general and sometimes in very abbreviated language but it helps us to kind of keep the Sign Code straight and I thought that it might be of some use for you when you are referencing in variances that come through.

Another issue that was brought up at the last meeting was the KDOT travel signs. We have heard a lot of cases for sign variances, along Kellogg, along K-96, and the KDOT travel signs have been brought up and kind of thrown about prices. So I put together this one sheet summary with a simple phone call to KDOT. This is just their basic information so I think it was my impression anyway that these signs were just expensive. But from looking at this, I don't think that it is that harsh and this hopefully will enlighten you in dealing in those areas.

PITTS: This is good information, I appreciate this.

VANDEWATER: We have no meeting next month, there were no new cases filed.

FOSTER: Do you recall Mr. Chairman, that at one time I think that there was some thought that they were charging \$350.00 a month for things like for these signs? So evidently that is not true so I think we ought to note that and when people talk about saying they can't advertise.

PITTS: This is good to know. Is there any other business to come before the body?

ADJORNED 2:45 p.m.